TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

No. [illegible]

OTTO OLSEN, PLAINTIFF IN ERROR,

vs.

A. D. SMITH, L. HUTH, L. REST, ET AL.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED MAY 10, 1906.

(18,540.)

(18,940.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 289.

OTTO OLSEN, PLAINTIFF IN ERROR,

vs.

A. D. SMITH, L. HUTH, L. BEST, ET AL.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 2, 1904.

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1 & 2 OTTO OLSEN, Plaintiff in Error,
vs.
A. D. SMITH ET AL., Defendants in Error. } From Galveston County.

Applied for by Messrs. Gresham & Gresham, attorneys for Otto Olsen, plaintiff in error, on the 27th day of December, 1901, delivered to Messrs. Gresham & Gresham, attorneys, this 28th day of December, A. D. 1901.

THOS. D. BRICK,
Clerk of the District Court, Galveston County,
By J. C. GENGLER,
Deputy Clerk.

3 THE STATE OF TEXAS,
County of Galveston.

At a term of the district court, 56th judicial district, begun and holden at Galveston, within and for the county of Galveston, before the Hon. Robert M. Franklin, and ending on the twenty-sixth (26″) day of November, A. D. 1901, the following case came on for trial, to-wit:

A. D. SMITH ET AL., Plaintiffs,
vs.
OTTO OLSEN, Defendant. } No. 22627.

4 *Original Petition.*

Filed December 4, A. D. 1900.

THE STATE OF TEXAS,
County of Galveston.

District Court, 56th Judicial District.

To the honorable judge of said court:

The petition of A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll and F. Johnson, plaintiff-, residing in Galveston county, Texas, against Otto Olsen, also a resident of said county, represents:

1. That plaintiffs are the duly appointed, qualified, commissioned and acting pilots of and at the port of Galveston, Galveston county, Texas, and they, and no others, are authorized to perform the duties of their offices, and to pilot in and out of the port of Galveston, sail vessels and registered steamers, that is, those bound to or from foreign ports.

2. That defendant is neither a branch nor a deputy pilot of the State of Texas, or port at Galveston, and has never been, and he possesses no authority or right, or color thereof, under the laws of Texas, or of the United States, either to act or offer his services as a pilot to any vessel of the kind or class mentioned, but notwithstanding such entire want of right or power, real or colorable, defendant assumes to serve and is actually serving as a pretended pilot and has offered, and still offers his services in that capacity to incoming and outgoing vessels, and is occasionally taken on board and employed by them as a pilot, contrary to law, both State and Federal, and defendant states his purpose to continue holding himself out as a pilot and to guide the movements of arriving and departing vessels to and from the port of Galveston, and plaintiffs believe and aver that his threats of such intended violations of the laws will be carried into effect unless restrained by due process of law.

That defendant, by his unlawful acts and conduct, extending over a long period, and his avowed determination of persisting therein, has caused, and is causing plaintiffs substantial and irreparable injury to their damage in the sum of not less than $1500.00; that is to say, his interference with them by boarding vessels in and out of the port of Galveston, and falsely representing himself to be an authorized pilot, and thus gaining permission from the masters of said vessels to bring them in and out of port, and then piloting such vessels as defendant has done, and is still doing, and threatens to continue to such extent prevents plaintiffs from exercising their official rights and duties as pilots, and from earning and receiving the fees and compensation attached to such services by law, and to which they are entitled under the statutes, *and which they are entitled under the statutes*, and which compensation has been fixed according to law by the board of pilot commissioners of the port of Galveston, and is as follows: For each foot of water which the vessel at the time of piloting draws, to-wit:

A vessel of the capacity of 500 tons or less, $3.00 per foot; a vessel of the capacity of from 500 to 1000 tons, $3.50 per foot; a vessel of the capacity of from 1000 to 1500 tons, $3.75 per foot, and vessels of 1500 tons capacity and over, $4.00, for each foot of water which they draw when piloted.

That defendant is wholly insolvent, and unable to satisfy any judgment for damages that may be recovered against him because of his wrongful and illegal acts, and in fact plaintiffs possess no adequate remedy other than the restraint of an injunction which will compel defendant to desist from acting or attempting to act as a branch or deputy pilot of this port, as he is now doing. That the action and threats on the part of defendant, herein mentioned, are without lawful sanction or color, or semblance thereof, of any character, and is not only an intrusion upon the rights of plaintiffs, but to the extent named, prevents them from discharging their duty as public officers, and is a practical denial by defendant of the right of this State to enact and enforce a system of pilotage laws, or to designate

and appoint efficient and responsible pilots, and to properly regulate the pilotage service, and thus guard the public interests and contribute to the safety and success of navigation and commerce; all of which facts entitle these plaintiffs to the writ of injunction requiring the restraint of the acts existing and threatened which are prejudicial to them, as has been stated, and they, therefore, pray your honor to issue your writ of injunction restraining the said defendant, and commanding him to desist from piloting or attempting to pilot sail vessels or registered steamers bound to or from foreign ports in or out of the port of Galveston, and from acting or assuming to act in any manner as branch or deputy pilot, or pilot, under the laws of the State of Texas, and of said port, or under the laws of the United States, with respect to the kind of vessels specified and upon the final hearing of this cause, plaintiffs pray that the injunc-
6 tion be made perpetual and that judgment be rendered in their favor against the said defendant for their damages, for costs and general relief.

JAMES B. & CHAS. J. STUBBS,
Counsel for Plaintiffs, A. D. Smith et al.

A. D. Smith, being duly sworn, on oath says that he is one of the plaintiffs in this cause, and in the foregoing petition, and that he makes this affidavit on behalf of his co-plaintiffs, being thereunto duly authorized by them, and for himself, and he says that the averments of fact set forth in the foregoing petition are true in substance and in fact.

A. D. SMITH.

Sworn to and subscribed before me this 30th day of November, A. D., 1900.

CHARLES J. STUBBS,
[SEAL.] *Notary Public in and for Galveston County, Texas.*

Upon consideration of the foregoing petition, it is ordered that upon the plaintiffs entering into bond, conditioned obligatory and secured as required by law (said bond to be approved by the clerk of this court), in the sum of three thousand dollars, the said clerk will issue the writ of injunction as prayed for in said petition, except that no injunction will issue restraining the defendant from acting as a pilot under the laws of the United States.

Witness my signature at Galveston, this 4th day of December, 1900.

E. D. CAVIN,
Judge 56th Judicial District.

Filed December 4th, 1900.

ALEX EASTON,
Clerk D. C. G. Co.,
By J. C. GENGLER, *Deputy Clerk.*

First Amended Original Answer.

Filed Nov. 11, 1901.

A. D. SMITH ET AL. vs. OTTO OLSEN. } No. 22627. Suit Pending in the District Court of the 56th Judicial District.

7 Now comes the defendant, Otto Olsen, in the above entitled and numbered cause and by leave of the court first had and obtained, files this his first amended original answer in lieu of his original answer filed February 4th, 1901; and demurs to plaintiffs' petition and says, the matters and things therein contained in manner and form as stated, are not sufficient in law to entitle the said plaintiffs to have or maintain their aforesaid action against him, the said Otto Olsen; and for special and additional causes of demurrer, showeth:

1. That no facts are alleged in said petition which entitle the petitioners to maintain a joint action against this defendant.

2. That petitioners show no facts that entitled them to the equitable relief they seek.

3. That the act of the legislature imposing a penalty of one-half pilotage and a forfeit of fifty dollars is illegal and void, in that it conflicts with the Constitution and laws of the United States.

4. That the acts of the legislature of the State of Texas, under and by which petitioners claim the rights stated in their petition, are in contravention of the rights guaranteed defendant by section 1, of the 14th amendment of the Constitution of the United States and by section 19, of article 1, of the constitution of the State of Texas.

5. That the acts of the legislature of the State of Texas, relied upon by petitioners as authorizing a combination by which they can prevent competition between themselves as also between themselves and others, and by which they monopolize the pilotage at the port of Galveston, are in contravention of the constitution and laws of this State, and of paragraph 3, section 8, article 1, of the Constitution of the United States and the anti-trust act of the Congress of the United States.

Wherefore, and for divers other good causes of demurrer, appearing on the face of said petition, this defendant doth demur thereto, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

GRESHAM & GRESHAM,
Attorneys for Defendant.

Not waiving his demurrers, but relying upon the same, this defendant, for answer, says, that he is a citizen of the United States

and of the State of Texas, and has resided continuously for more than ten years at the port of Galveston in said State, which is a greater term of residence in said State than that required by the board of commissioners of pilots for the said port of Gal-
8 veston; that he is an experienced and skilled seaman and holds a license under the laws of the United States as a pilot of coastwise vessels for the port of Galveston, and is familiar with the harbor of Galveston and entrance thereto, and has served for more than five years as a pilot at that port, and is by education, training and experience, mentally, physically, morally and in all other respects qualified to act as a branch pilot for said port, although he has never been appointed or served as deputy pilot, but he has repeatedly, within the last three years, requested the board of commissioners of pilots for the port of Galveston, to examine him as to his qualifications to act as a branch pilot for said port and to decide on his qualifications and to report their findings to the governor of this State; but said board of commissioners of pilots refused and still refuse to comply with his request, claiming that under the laws of the State of Texas, they have no authority or right to examine any one for the position of branch pilot, unless the applicant has been appointed by and has served as a deputy pilot under one of the petitioners for a term of one year. This defendant is now ready and here offers to prove his competency and skill as a pilot for said port in any manner that this honorable court may deem meet and proper.

This defendant admits that each of the petitioners is a branch pilot and as such is authorized to offer his services as a pilot to any vessel entering or leaving the port of Galveston, but he alleges and so charges that petitioners and each of them have refused to appoint this defendant or any one else as a deputy who will not act under and in accordance with the rules, orders and regulations made by said association, for the purpose of preventing competition.

That petitioners, contriving and intending to counteract the effect of free competition in pilotage at the port of Galveston and to lessen their labors and minimize the facilities they should offer all vessels entering and departing from said port, and to maintain arbitrarily the maximum rates of pilotage allowed by law, have associated themselves together as partners; that by reason of such association and agreement they prevent competition and monopolize the pilotage at said port of vessels engaged in the transportation of traffic and commerce among the several States and with foreign nations; that the combination and agreements of petitioners are in restraint of trade and commerce between the several States and with foreign nations and illegal; that the trade traffic and commerce passing through
9 the port of Galveston are restrained hindered and injured by said combination and the acts of petitioners and the fees charged by them.

That the Federal Government by the construction of jetties has deepened and widened the channel across the bar heretofore exist-

ing at the entrance to the harbor of Galveston and has designated and marked the channel in said harbor by buoys and lights so that the same can be navigated by vessels drawing 22 feet at night as well as by day, and has also established the harbor lines of said port at a point one mile beyond the sea end of said jetties.

That petitioners have been and are now confederating and conspiring to prevent defendant from pursuing his trade or vocation as a pilot at the port of Galveston, and are using their means and influence to harass and injure him, and also to prevent any change in the statutes of the State regulating the appointment of branch or deputy pilots.

This defendant alleges that all vessels that he has piloted or tendered his services to pilot into or out of the port of Galveston, are British vessels; but he says that under the laws and treaties of the United States, he has the right to pilot such vessels into and out of the port of Galveston.

This defendant denies that petitioners have any exclusive right to conduct the pilotage at the port of Galveston, or that they can take from him his right to enjoy, upon terms of equality with all others in similar circumstances, the liberty to pursue his calling, profession or trade as a pilot.

All which matters and things, this defendant is ready to aver and prove, as this court shall direct, and prays to be hence dismissed with his costs in this behalf sustained.

GRESHAM & GRESHAM,
Attorneys for Defendant.

Filed November 11th, 1901.
THOS. D. BRICK,
Clerk D. C. G. Co.,
By J. C. GENGLER, *Deputy.*

First Supplemental Petition.

Filed Nov. 11, 1901.

A. D. SMITH ET AL.
vs.
OTTO OLSEN.
No. 22627.

10 Now come plaintiff- in the above cause, and with leave of court, file this their first supplemental petition, and demur to the first amended original answer, filed November 11th, 1901, of the defendant, because the same states no ground of defense to plaintiffs' suit.

And without waiving the general demurrer, but insisting thereon, plaintiffs especially except to the following parts of said answer:

(1.) To the first paragraph, which alleges, in substance, defendant's skill and experience, which would qualify him to act as a branch pilot, and the refusal of the board of pilot commissioners to examine him with respect thereto.

(2.) To that part of the answer which alleges that plaintiffs had refused to appoint defendant, or any one else, as a pilot, who would not act under and in accordance with the rules, orders and regulations made by the pilots association—because the same are not stated. The court should be advised as to what they are in order that it may determine their effect.

(3.) To all those parts of the answer charging illegal combination and monopoly and agreements and that commerce is restrained by any of the acts of plaintiffs.

(4.) To all that part of the answer that there is not a bar over which it is necessary for vessels to be piloted, and which claims that the improvement of the harbor by the Federal Government deprives plaintiffs of the right given them under the laws to act as pilots.

(5.) To that section of the answer that charges a confederation and conspiracy and the use and means of influence to harass and injure defendant, or to prevent any change in the statutes regulating the appointment of branch or deputy pilots.

(6.) To the averment that defendants have no exclusive right to conduct the pilotage at the port of Galveston and all other like averments in said answer.

And plaintiffs show that none of the above matters excepted to, constitute any defense to plaintiffs' suit, even if they had been fully pleaded, and are indefinite, uncertain and lacking in clearness and sufficiency, and are conclusions of the pleader rather than statements of fact.

Wherefore, plaintiffs pray that the same be stricken out, and they pray for judgment.

JAMES B. & CHARLES J. STUBBS,
Attorneys for Defendants.

11 And without waiving any of the foregoing, but insisting thereon, plaintiffs deny all and singular the averments of defendant's first amended original answer.

JAMES B. & CHARLES J. STUBBS,
Attorneys for Plaintiffs.

Filed November 11th, 1901.

THOS. D. BRICK,
Clerk D. C. G. Co.,
By J. C. GENGLER, *Deputy.*

Judgment of the Court and Notice of Appeal.

A. D. SMITH ET AL.
vs.
OTTO OLSEN. } No. 22627.

NOVEMBER 11TH, 1901.

On this day came on to be heard the above entitled and numbered cause, and the defendant was granted leave to file a first amended original answer in lieu of original answer filed the 11th day of November, 1901, and plaintiffs were granted leave to file their first supplemental petition; and thereupon came on to be heard the demurrer and exceptions of the defendant to plaintiffs' original petition, and it being the opinion of the court that the law is for the plaintiffs, it was considered by the court that the same be overruled; and the demurrer and exceptions of the plaintiffs to the defendant's first amended original answer then came on to be heard, and it being the opinion of the court that the law is for the plaintiffs, it is therefore considered that their exceptions to said answer be and are hereby sustained; to both of which rulings defendant excepted; and it appearing to the court that the said plaintiffs, A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll and F. Johnson, are entitled to the relief prayed for in said petition. It is therefore considered and so ordered, adjudged and decreed by the court that the temporary injunction heretofore granted in said cause be and the same is hereby perpetuated and the defendant Otto Olsen, and his associates, agents and employees are hereby enjoined and restrained from piloting, or attempting to pilot, sail vessels or register-steamers bound to and from foreign ports in or out of the port of Galveston, and from acting, or assuming to act in any manner as a pilot of said port with respect to the kinds or classes of vessels above specified. And it is further ordered, adjudged and decreed that
12 the said plaintiffs do have and recover of and from the defendant all the costs in this behalf incurred, for which they may have their executions, and that the officers of court have judgment against the parties for the costs by them respectively, incurred, for which also let execution issue.

To all of the foregoing rulings and judgment the defendant, Otto Olsen, excepts and in open court gives notice of appeal.

Petition for Writ of Error.

Filed December 27, 1901.

A. D. SMITH ET AL.
vs.
OTTO OLSEN. } No. 22627.

To Thomas Brick, Esq., clerk of the district court of Galveston county, Texas:

Your petitioner, Otto Olsen, a resident citizen of Galveston county, State of Texas, presents this his petition for a writ of error and shows:

That at the October term 1901 of the district court (the 56th judicial district) of Galveston county, in cause No. 22,627, upon the docket of the district court of said 56th judicial district of Texas, wherein A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, G. H. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll and F. Johnson were plaintiffs, and your petitioner was defendant, all of whom reside in Galveston county, State of Texas, the said plaintiffs recovered on the 11th day of November, 1901, a judgment against your petitioner, Otto Olsen, perpetuating the injunction as prayed for against him and adjudging him to pay all costs of suit.

That petitioner desires to prosecute a writ of error from said judgment and to remove said cause to the court of civil appeals for the first supreme judicial district, at Galveston, in Galveston county, Texas, for revision and correction.

That he herewith tenders his affidavit in lieu of a bond, and asks the issuance of a supersedeas as required by law.

Wherefore he prays that the said plaintiffs, all of whom reside in the county of Galveston, State of Texas, be cited as required by law and that your petitioner have his writ of error and such other processes and rights as he may be entitled to under the law and he will ever pray, etc.

13 GRESHAM & GRESHAM,
Attorneys for Defendant.

Acceptance of Service of Citation in Error.

Citation in error waived and service accepted.
December 27th, 1901.

JAS. B. & CHAS. J. STUBBS,
Attorneys for Defendants in Error.

Filed December 27th, 1901.
THOS. D. BRICK,
Clerk D. C. G. Co.,
By J. C. GENGLER, *Deputy.*
2—289

Affidavit in Lieu of Bond for Costs.

Filed Dec. 27, 1901.

A. D. SMITH ET AL.
vs.
OTTO OLSEN. } No. 22627.

Otto Olsen, defendant in the above styled and numbered cause, pending in the district court of Galveston county, (56th judicial district,) being duly sworn, at a regular term of said court, to-wit: on the 11th day of December, 1901, the plaintiffs in said cause recovered a judgment against him perpetuating the injunction and taxing him with all costs of suit, from which said judgment he desires to prosecute a writ of error to the court of civil appeals in the first supreme judicial district, but that he is unable to pay the costs of the writ of error or any part thereof, or to give security therefor.

OTTO OLSEN.

Sworn and subscribed to before me in open court, this 27th day of December, 1901.

ROB'T M. FRANKLIN,
Judge of the 56th Judicial District of Texas.

Filed December 27th, 1901.

THOS. D. BRICK,
Clerk D. C. G. Co.,
By J. C. GENGLER, *Deputy Clerk.*

14 *Order of Court Allowing Defendant to Prosecute Writ of Error on Pauper's Affidavit.*

A. D. SMITH ET AL.
vs.
OTTO OLSEN. } No. 22627.

DECEMBER 27TH, 1901.

The defendant, Otto Olsen, on this day filed his affidavit and made oath in open court to the effect that he is unable to pay the costs of the writ of error in this cause, and due notice thereof having been given, and the plaintiffs and officers of the court having failed to offer any objections to said affidavit; it is ordered by the court that said defendant, Otto Olsen, be and he is hereby allowed to prosecute his writ of error in this cause, without bond or security therefor.

Assignment of Errors.

Filed December 27, 1901.

OTTO OLSEN, Plaintiff in Error,
vs.
A. D. SMITH ET AL., Defendant- in Error. } # 22627.

Now comes plaintiff in error in the above numbered and entitled cause and assigns the following errors prejudicial to him committed by the trial court on which he will rely for reversal of the judgment of said trial court:

1. The court erred in overruling defendant's general demurrer to petitioners' petition.

2. The bar, at the entrance of Galveston harbor having been removed and the harbor lines extended seaward for a mile beyond — that bar formerly was; the court erred in holding that plaintiffs have the exclusive right to pilot vessels into and out of the harbor and also the right to collect half pilotage from vessels piloted into port by defendant.

3. The court erred in overruling defendant's general demurrer and special exception No. 3, and in holding that the statute that imposes a liability for half pilotage and a forfeit of $50.00, in favor of a branch pilot, who tenders his services to any vessel outside of the bar, that is afterwards piloted by another person over the bar, is valid and binding, except as to the following classes of vessels; all vessels of whatever burden owned, registered and licensed in the State of Texas, when arriving from or departing to any port in the State of Texas; all vessels of 75 tons burden and under, owned and licensed for the coasting trade in any part of the United States when arriving from or departing to any port in the State of Texas; all vessels of 75 tons or under, owned in the State of Texas, and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States.

4. The court erred in overruling defendant's general demurrer and special exception No. 4, and in holding that the statute of the State of Texas, prescribing the qualifications and regulating the appointment of branch pilots are valid and do not abridge or deprive defendant of any right guaranteed him by section 1 of the 14th amendment of the Constitution of the United States.

5. The court erred in overruling defendant's general demurrer and special exception No. 4, and in holding that the acts of the legislature of the State of Texas, prescribing the qualifications and regulating the appointment of branch pilots are not in contravention of defendant's right as guaranteed by sec. 19, art. 1 of the constitution of the State of Texas.

6. The court erred in overruling defendant's general demurrer and special exception No. 5, and in holding that the acts of the legislature of the State of Texas, relied upon by petitioners, are not violative of paragraph 3, sec. 8, article 1, of the *Constitution* of the United States and the anti-trust act of the Congress of the United States.

7. The court erred in overruling defendant's general demurrer and 5th special exception and in holding that the acts of the legislature of the State of Texas, prescribing the qualifications and regulating the selection of branch pilots are reasonable and not in conflict with the laws of the United States, or of the State of Texas.

8. The court erred in sustaining petitioners' demurrer to plaintiffs' first amended original answer.

9. The court erred in sustaining petitioners' general demurrer and special exception to defendant's amended answer and in holding that the petitioners have the right to combine and to prevent competition in pilotage at the port of Galveston, and to minimize the service they should offer vessels entering and departing
16 from said port and by their acts to restrain, hinder and injure the trade, traffic and commerce passing through said port.

10. The court erred in sustaining petitioners' special exception No. —, and in holding that petitioners have the right to confederate and conspire to prevent defendant from serving as a pilot.

GRESHAM & GRESHAM,
Attorneys for Plaintiff in Error.

Filed December 27th, 1901.

THOS. D. BRICK,
Clerk D. C. G. Co.,
By J. C. GENGLER, *Deputy Clerk.*

Bill of Costs—Clerk's Fees.

Docketing suit	$ .20
Issuing citation and copies	1.00
Filing papers	2.00
Entering appearance	.15
Entering continuance	.60
Entering orders	1.50
Affidavit with certificate and seal	1.00
Entering final judgment	1.25
Taking bond	1.50
Taxing costs and copy	.25
Writ of injunction and copy	1.50
Transcript	14.00
Filing and certfg. briefs	1.80
	$26.75

Sheriff's Fees.

Serving citation	.75
Serving notice to take deposition	1.00
Jury fee	.50
Serving injunction	.75
	$29.75

Bill of Costs of Appeal.

Filing papers	$ .45
Entering orders	.75
Affidavit with certificate and seal	.50
Transcript	14.00
Filing & cert. to brief	1.80
	$17.50

Sheriff's Fees.

Serving notice	1.00
	$18.50

17 THE STATE OF TEXAS, }
County of Galveston. }

I, Thos. D. Brick, clerk of the district court in and for the county of Galveston, State of Texas, do hereby certify that the foregoing eighteen (18) pages contain a true and correct transcript of all the proceedings had in said court in cause numbered 22,627 and entitled A. D. Smith *et al.*, plaintiffs, *vs.* Otto Olsen, defendant, as all the same appears on file and of record in my office.

Witness, Thos. D. Brick, clerk of the district court of Galveston county.

Given under my hand and official seal, at Galveston, on this the 28th day of December, A. D., 1901.

THOS. D. BRICK,
Clerk of the District Court of Galveston County,
[SEAL.] By J. C. GENGLER,
Deputy Clerk.

Endorsements on transcript: No. —. Otto Olsen, plaintiff in error, *vs.* A. D. Smith *et al.*, defendants in error. Appeal from Galveston county, Texas. Transcript. Applied for by Messrs. Gresham & Gresham, attorneys for Otto Olsen, plaintiff in error, on the 27th day of December, 1901, delivered to said Messrs. Gresham & Gresham, attorneys, this 28th day of December, 1901. Thos. D. Brick, clerk district court Galveston county, Texas, by J. C. Gengler, deputy. Filed in court civil appeals Jan. 6, 1902. 1st district, H. M. Knight, clerk. Filed in the court of civil appeals at San Antonio, Texas, Feb. 4, 1903. H. E. Hildebrand, clerk.

Order of Transfer of Cause.

Be it remembered: That at a term of the honorable court of civil appeals of the State of Texas, begun and holden at Galveston on Oct. 7, 1902, present C. C. Garrett, chief justice, and associate justices, R. A. Pleasants and W. H. Gill, in the cause, Otto Olsen, appellant, *vs.* A. D. Smith *et al.*, appellees. No. 2972. From Galveston county. The following orders were made: Jan. 30, 1902. In compliance with an order of the supreme court of Texas, dated Jan. 27, 1902, it is ordered that this cause be transferred to the court of civil appeals for the fourth supreme judicial district at San Antonio, and that the clerk of this court certify all orders made and costs accrued in this court, and transmit all records and papers in this cause to the clerk of said fourth district."

I, H. M. Knight, clerk of the court of civil appeals of Texas, at the city of Galveston, hereby certify that the foregoing is a true copy of the orders herein made by this court in the above entitled and numbered cause as appears of record.

In witness whereof, I hereunto set my hand and affix the seal of said court at Galveston, this Jan. 30, 1902.

[SEAL.] H. M. KNIGHT, *Clerk.*

Endorsed: #2491. Otto Olsen *vs.* A. D. Smith, *et al.* Copy of orders of court of civil appeals at Galveston. Filed in the court of civil appeals at San Antonio Feb. 4, 1902. H. E. Hildebrand, clerk.

18 *Opinion of Court of Civil Appeals.*

OTTO OLSEN, Plaintiff in Error,
vs.
A. D. SMITH ET AL., Def'ts in Error. } No. 2491. Appeal from Galveston County.

The suit was brought by defendants in error as duly commissioned branch pilots of the port of Galveston against plaintiff in error to enjoin him from piloting, or attempting to pilot sail vessels or registered steamers bound to or from foreign ports in or out of the port of Galveston, and from acting or assuming to act in any manner as branch or deputy pilot or with respect to such vessels. The decree was for injunction accordingly.

The petition alleged in substance that defendant is not a branch pilot nor deputy pilot, but notwithstanding his want of power or right to act, he assumes to act and does act as such; offers his services to incoming and outgoing vessels and is occasionally taken on board and employed by them as a pilot, contrary to law; and de-

clares his purpose to continue holding himself out as a pilot and petitioners believe and aver that his threats of such intended violations of law will be carried into effect, unless he is restrained. That *by* his unlawful acts and conduct and his avowed determination of persisting therein has caused and are causing plaintiffs substantial and irreparable injury, and prevents plaintiffs from exercising their official rights and duties as pilots and from earning and receiving the fees and compensation fixed by law and by the board of pilot commissioners of said port, that defendant is insolvent, and plaintiffs have no other adequate remedy than that of injunction.

The substance of defendant's answer will appear from the several assignments of error, as they are discussed.

Demurrers were made to the petition which were overruled and plaintiffs' demurrers to the answer were sustained and decree was entered granting plaintiffs the relief prayed for, the decree reciting that it appeared to the court that they were entitled to such relief. There is no statement of facts, and we infer that the judgment was rendered on admissions in the answer.

The following is appellant's proposition under the 1st and 2nd assignments. "The bar heretofore existing between the waters of the gulf and the harbor of Galveston having been removed
19 and the Federal Government having extended the harbor lines one mile beyond the sea end of the jetties defendants in error have no right under the law to demand half pilotage." The only relevant allegation in the answer is that the Federal Government by the construction of the jetties has deepened and widened the channel across the bar existing at the entrance to the harbor of Galveston and has designated and marked the channel in said harbor by buoys and lights so that the same can be navigated by vessels drawing 22 feet of water as well as by day, and has also established the harbor lines of said port at a point one mile beyond the sea end of said jetties." The proposition has no connection with the 1st assignment of error which is that the court erred in overruling defendant's general demurrer to plaintiff's petition. Appellant must be asserting said proposition under the 2nd assignment as the court sustained a special demurrer to the portion of the answer above quoted. We think there is nothing in the point. The deepening and widening of the channel across the bar and the extension of the harbor limits, do not affect the applicability of our statutes to the harbor. The legislature evidently intended by the words "outside the bar" outside the harbor limits.

Under the 3rd and 8th assignments the following proposition is advanced:—

"The statute that gives to the pilot, whose services are offered to and refused by a vessel outside of the bar, a claim for half pilotage against the vessel and a claim for a forfeit of $50.00 against the person piloting such vessel into or out of the port and then exempts certain vessels from the provision of the act is in conflict with the laws and treaties of the United States, and void."

In 1866 and in 1871 Congress enacted the following statutes:—

In 1866. "No regulations or provisions shall be adopted by any State which shall make any discrimination in the rate of pilotage or half pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States, and all existing regulations or provisions making any such discrimination are annulled and abrogated." U. S. Rev. Stat., sec. 4237."

In 1871. "No State or municipal government shall impose upon pilots of steam vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by this title; nor shall any pilot charges be levied by any such authority upon any steamer piloted as provided by this title; and in no case shall the fees charged for the pilotage of any steam vessel exceed the customary or legally established rates in the State where the same is performed. Nothing in this title shall be construed to annul or affect any regulation established by the laws of any State, requiring vessels entering or leaving a port in any such State, other than coastwise steam vessels, to take a pilot duly licensed or authorized by the laws of such State, or of a State situate upon the waters of such State." (U. S. Rev. Stat., sec. 4444.)

The former of these provisions conflicts with art. 3801 of our statutes in that the latter exempts "all vessels of whatsoever burthen owned in the State of Texas when arriving from or departing to any port in the State of Texas, and the second also conflicts with our statutes in that they subject certain coastwise steam vessels to pilotage. There can be no question that the acts of Congress on the subject are paramount and nullify at least so much of our statutes as are inconsistent with them. Appellant insists that the several provisions of our pilot law constitute one entire scheme and the intent of the legislature to exempt Texas vessels engaged in strictly State commerce, and to include all coastwise vessels over 75 tons burden, are so interwoven and connected that it is impossible to separate them, or to declare that the legislature would have enacted the law at all if they had in view the illegality of such particular exemption and inclusion. That the objectionable provisions are separable from the rest of the provisions seems to us too plain for discussion.

The individual provisions relate only to coastwise vessels, as distinguished from foreign ones; therefore the subject matters are distinct as between these classes of vessels. It is our opinion that these minor provisions with respect to certain coastwise vessels were not of prime importance in the mind of the legislature, in view of the settled policy of this State since 1846 to establish pilot regulations for its harbors. We therefore cannot accede to the proposition that it is evident or even reasonably inferable that the legislature

would not have enacted the provisions in reference to foreign vessels alone.

21 The Alameda 32 Fed. 333. Reagan *v.* Farmers' Loan & Trust Co., 154 U. S. 362. Tel. Co. *vs.* The State of Texas, 62 Tex. 630.

In this connection it is also claimed that our statutes on this subject conflict with a treaty between the United States and Great Britain of Dec. 22, 1815, a provision of which is as follows:—

"No higher or other duties or charges shall be imposed in any of the ports of the United States on British vessels than those payable in the same ports by vessels of the United States; nor in the ports of any of His Britannic Majesty's territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels." (Treaties and Conventions between the United States and Other Powers, published by the U. S. Government in 1889, p. 411.)

Defendant alleged that all vessels that he had piloted or tendered his services to pilot in or out of the harbor, are British vessels, and that by virtue of said treaty he has the right to do so. This position taken is that because certain United States vessels (coastwise vessels) are relieved, all British vessels are therefore exempt, whether coastwise or foreign. United States vessels engaged in foreign trade have never been relieved and are still subject to the pilot laws of this State, but says appellant, British ships engaged in foreign trade are nevertheless not subject to them. The meaning of the treaty is evident viz: that British vessels should have the benefits accorded United States vessels at American ports, the same and no more or less, and that no discrimination should be made. In respect to British coastwise vessels they are exempt from our statute because United States coastwise ships have been exempted. The exemption has not been extended to American ships engaged in foreign commerce, and until this is done British vessels of the same character are equally subject to our statute.

Under the 4th and 5th assignments propositions are made, 1st., "that the legislature cannot declare a trade, profession, occupation or business to which none of the functions of government attach, to be an office, limit the number of citizens who may hold the same and prohibit all others, whatever may be their qualifications and fitness from pursuing such trade, profession, occupation or business;" and 2nd, "the provisions of the statute which declare a pilot to be an officer and limit the number of citizens who can serve as
22 pilots to appellees and such deputies as they may choose to appoint *is* void." The assignments are in substance that our statute violates sec. 1 of the 14th amendment of the Federal Constitution and sec. 19 art. 1 of our State constitution, in prescribing the qualifications and regulating the appointment of branch pilots.

Upon this subject much might be written. But in view of the universality of such laws and their long observance and enforcement

in commercial countries, very little *need* be said. The object of such laws is to protect life and property from the perils incident to navigation. Steamship Co. *v.* Joliffe, 2 Wall. 450. The subject comes fairly within the scope of governmental or police functions. We consider the case of Petterson *vs.* Board of Comm'rs. 57 S. W. 1007, as deciding the questions raised by these assignments, against the contention of appellant.

A proposition under the 10th assignment is as follows:—

"It is against public policy and illegal for defendants in error, either as officers of the State or as individuals, to confederate and conspire against the plaintiff in error and to use their means and influence for the purpose of preventing him from becoming a branch pilot and from pursuing his occupation as a pilot."

This proposition is based on an allegation in defendants' answer, and stricken out, which is as follows: "That petitioners have been and are now confederating and conspiring to prevent defendant from pursuing his trade or vocation as a pilot at the port at Galveston and are using their means and influence to harass and injure him and also to prevent any change in the statutes of the State regulating the appointment of branch or deputy pilots."

We fail to perceive how this would constitute a defense to a suit for injunction brought by plaintiffs to enjoin defendant from interfering with the exercise of their official duties, or with the emoluments of their office. It was admitted in the answer that plaintiffs were branch pilots as alleged, and that defendant had not been created a branch or deputy pilot, and that he had been acting and offering to act as pilot to incoming and outgoing British vessels. If so the injunction was properly granted, and the fact that plaintiffs may be using their combined efforts — prevent any change in the laws, or to prevent plaintiff from receiving appointment as a branch or deputy pilot, would not have placed him in any better situation in this proceeding.

23 Under the 6th, 7th and 9th assignments we find the following propositions: "The combination of defendants in error which controls and monopolizes the pilotage at this port of Galveston and prevents competition is illegal in that it is in restraint of commerce among the several States and with foreign nations."

The averment in the answer to which the proposition is applicable is as follows:

"That petitioners, contriving and intending to counteract the effect of free competition in pilotage at the port of Galveston and to lessen their labors and minimize the facilities they should offer all vessels entering and departing from said port, and to maintain arbitrarily the maximum rates of pilotage allowed by law, have associated themselves together as partners; that by reason of such association and agreement they prevent competition and monopolize the pilotage at said port of vessels engaged in the transportation of traffic and commerce along the several States and with foreign nations;

that the combination and agreements of petitioners are in restraint of trade and commerce between the several States and with foreign nations and illegal; that the trade, traffic and commerce passing through the port of Galveston are restrained, hindered and injured by said combination and the acts of petitioners and the fees charged by them."

The State, as already stated, may create the office of pilot. By the same act it has created the office of commissioners of pilots, who decide upon the qualifications of applicants for branch or deputy pilots, and who recommend to the governor where appointments are proper, such as are meritorious, etc. They may for sufficient cause upon hearing suspend a pilot or deputy and the governor has power at will to remove or reinstate one. The entire subject is under the control of the governor and the commissioners. So long as they see fit to retain defendants in error in office as pilots, plaintiff in error cannot question their right to exercise their functions. The very nature of an "office" is that it gives a monopoly of exercising the official acts pertaining thereto to the incumbent, to the exclusion of others, though equally fit. If they improperly conspire and combine, this might be conduct that would suggest their removal by the governor, or be cause for suspension by the commissioners. We cannot see how such acts would, while they are allowed to remain in office, in any manner affect their right to per-
24 form its duties or to protect themselves in its emoluments.

We think, however, that the injunction granted by this decree goes further than petitioners are entitled. The statute contemplates that under certain circumstances an unlicensed pilot may act. This is the effect of art. 3803, "If any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot the sum of fifty dollars to be recovered before any court having cognizance of the case."

The decree enjoins plaintiff in error "his associates, agents and employees from piloting or attempting to pilot said vessels or registered steamers bound to or from foreign ports in or out of the port of Galveston."

Under this decree he could not act even in cases where no licensed pilot or deputy offers his services. It may possibly be impracticable at times for service to be tendered by a regular pilot, or this might be the result of unwillingness, or discrimination on their part against vessels. It can be seen that conditions may arise making it possible and proper for an unlicensed pilot to be called into service, and the legislature doubtless had such conditions in view when it enacted the above article. We therefore think that the injunction should be modified in this respect.

The decree goes beyond the pleadings in including within the injunction the associates of plaintiff in error, besides his agents and employees. There is nothing in the petition that asks for relief

against his associates. If they were sought to be included they should have been joined as parties.

The decree will be reformed in these respects and affirmed.

(Signed) J. H. JAMES,
Chief Justice.

Endorsed: No. 2491. In court of civil appeals, fourth supreme judicial district of Texas, San Antonio. Otto Olsen, pl't'ff in error, *vs.* A. D. Smith *et al.*, def'ts in error. From Galveston county. Opinion by J. H. James, chief justice. Filed in the court of civil appeals at San Antonio, Texas, Apr. 23, 1902. H. E. Hildebrand, clerk. Filed in supreme court June 18, 1902. F. T. Connerly, clerk.

25 *Judgment of the Court of Civil Appeals*

WEDNESDAY, *April* 23, *A. D.* 1902.

OTTO OLSEN, Pl't'ff in Error, *vs.* A. D. SMITH ET AL., Def'ts in Error.	No. 2491. Writ of Error from District Court of Galveston County.

This cause came on to be heard on the transcript of the record and the same being inspected, because it is the opinion of the court that there was error in the judgment in so far as the injunction granted by the court below includes the associates of the plaintiff in error, Otto Olsen; it is therefore ordered, adjudged and decreed that the judgment of the court below in so far as it enjoins and restrains the associates of the said plaintiff in error from piloting or attempting to pilot said vessels or registered steamers bound to and from foreign ports in or out of the port at Galveston and from acting or assuming to act as a pilot of said port with respect to the kinds or classes of vessels and steamers above specified be and the same is hereby vacated and set aside; and it being the opinion of this court that the injunction granted by the court below should be limited to cases where a licensed pilot or deputy pilot offers his services to such vessels or registered steamers; it is therefore further ordered, adjudged and decreed that said injunction granted by the court below be and it is hereby limited to such cases where a licensed pilot or deputy pilot offers his services to such vessel or registered steamer and that such injunction shall not apply to a vessel or steamer of the classes named in the judgment of the court below where no licensed pilot or deputy pilot offers his services to such vessel or steamer. And because the court is further of the opinion that there was no other error in the judgment; it is therefore further considered, adjudged and ordered that the judgment of the court below as herein modified and reformed be affirmed; that the defendants in error, A. D. Smith, L. Luth, L. Best, George Wilson, H. Wachsen, H. G. Jones, Wm. Hay-

man, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll, and F. Johnson, pay all costs of this writ of error and this decision be certified below for observance.

26 *Motion for Rehearing.*

In the Court of Civil Appeals, Fourth Supreme Judicial Circuit of Texas.

OTTO OLSEN, Plaintiff in Error,
vs.
A. D. SMITH ET AL., Defendants in Error. } No. 2491.

Writ of error from Galveston county, Texas.

Motion of Plaintiff in Error for Rehearing.

Now comes Otto Olsen, plaintiff in error, in the above cause, and moves this honorable court to set aside its judgment in said cause, rendered on the 23rd day of April, 1902, and to grant him a rehearing therein for the following reasons, to-wit:—

First. The trial court erred in holding that the bar between the waters of the gulf and the harbor of Galveston having been removed and the Federal Government having extended the harbor lines one mile beyond the sea end of the jetties, which is about eight miles from land and beyond the jurisdiction of the State of Texas, defendants in error, have the right to demand half pilotage and to recover a forfeit of $50.00, And that the words "outside the bar" used by the statute means "outside the harbor lines," and this honorable court erred in affirming the trial court's judgment in that particular.

Second. The trial court erred in holding that the statute that gives to the pilot, whose services are offered to and refused by a vessel outside of the bar, a claim for half pilotage against the vessel and a claim for a forfeit of $ 0.00 against the person piloting such vessel into or out or the port and then exempts certain vessels from the provision of the act is not in conflict with the laws and treaties of the United States and void. And this honorable court erred in affirming the trial court's judgment in that particular.

Third. This court erred in holding that the illegal provisions of the pilot laws can be eliminated by the court and the rest of the statute stand as the will of the legislature.

Fifth. The trial court erred in holding that it is not against public policy and illegal for defendants in error to confederate and conspire against the plaintiff in error for the purpose of preventing him from becoming pilot and from pursuing his occupation as a pilot. And this honorable court erred in affirming the trial court's judgment in that particular.

27 Sixth. The trial court erred in holding that the legislature can declare a trade, profession, occupation or business, to which none of the functions of Government attach, to be an office, limit the number of citizens who may hold the same and prohibit all others, whatever may be their qualifications and fitness from pursuing such trade, profession, occupation or business. And this honorable court erred in affirming the trial court's judgment in that particular.

Seventh. The trial court erred in holding, that a branch pilot and a deputy pilot is a State officer. And this honorable court erred in affirming the trial court's judgment in that particular.

Eighth. The trial court erred in holding that the provisions of the statute which designates a pilot "an officer" and limits the number of citizens who can serve as pilots to defendants in error and such deputies as they may appoint is valid.

Ninth. This court erred in holding that the State, under its police powers, can take from a citizen, who possesses the requisite qualifications, his liberty of pursuing his occupation as a pilot.

Respectfully submitted,

GRESHAM & GRESHAM,
Solicitors of Plaintiff in Error.

Endorsed: Mo. #2880. No. 2491. Motion for rehearing. Otto Olsen, plaintiff in error, *vs.* A. D. Smith *et al.*, defendants in error. Filed in the court of civil appeals at San Antonio, Texas, May 2, 1902. H. E. Hildebrand, clerk. Filed in supreme court June 18, 1902. F. T. Connerly, clerk.

Request for Modification of Judgment and Opposition to Motion for Rehearing.

In Court of Civil Appeals, Fourth Supreme Judicial District of Texas.

OTTO OLSEN, Plaintiff in Error, *vs.* A. D. SMITH ET AL., Defendants in Error.	No. 2491. Writ of Error from Galveston County, Texas.

Now comes A. D. Smith and the other defendants in error, and replying to the motion for rehearing, respectfully suggest that as no argument or authority is submitted other than those contained in the brief of plaintiff in error, the motion should be denied,
28 as all of the subjects indicated in the motion were fully considered by the court in its determination of the case.

Defendants in error, however, submit that that part of the opinion reforming the decree of the court below should be withdrawn for several reasons, one of which is that the plaintiff in error, as we under-

stand the assignments presented by him, did not ask this relief. But if he had done so, his pleadings would not authorize such modification of the decree as he claimed the right to pilot British vessels bound to and from foreign ports under any and all circumstances.

While it is possible, although not probable, that the pilots appointed by the governor might not at some time be able or willing to serve a vessel, such a case is not presented by the facts set up in the pleadings in the present case. And as plaintiff in error did not state such a case, nor asked such reformation of the decree, this court might well refrain from thus changing the judgment below.

Again we submit that the clear intendment and effect of the statute is to prohibit others acting as or performing the services of pilots. The payment of the penalty of fifty dollars ($50.00) should not be construed as a license from the State.

There is another view that we would present, and that is that under no circumstances should plaintiff in error be allowed to represent himself as an authorized pilot for vessels bound to or from foreign ports.

The opinion is an epitome of the law and the reason thereof, and we earnestly ask that the court consider this, our suggestion or motion that the decree below be allowed to stand as rendered.

JAMES B. & CHAS. J. STUBBS,
Counsel for Defendants in Error.

Endorsed: 2491. Court of civil appeals, fourth supreme judicial dist. Otto Olsen, pl't'ff in error, *vs.* A. D. Smith *et al*, def'ts in error. Request for modification of judgment of court of civil appeals and opposition to motion for rehearing. Filed in the court of civil appeals at San Antonio, Texas, May 13, 1902. H. E. Hildebrand, clerk.

Order of Court on Motion for Rehearing.

WEDNESDAY, *May 21st, A. D.* 1903.

OTTO OLSEN, Plaintiff in Error,
vs.
A. D. SMITH ET AL., Def'ts in Error.
} No. 2491. Writ of Error from Galveston County.

29

The motion of plaintiff in error for a rehearing, filed May 2, 1902, and the request of defendants in error for modification of judgment, filed May 13, 1902, coming on to be heard and the court having duly considered the same; it is ordered that said motion and said request for modification of judgment be and they are hereby both overruled and it is further ordered that plaintiff in error, Otto Olsen, pay all costs of said motion, and defendants in error, A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, Wm.

Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll, and F. Johnson, pay all costs of said request for modification of judgment.

Copy of Judgment in Supreme Court.

In Supreme Court of Texas, Fourth District.

OTTO OLSEN
vs.
A. D. SMITH ET AL.

JUNE 25, 1902.

This day came on to be heard the application of Otto Olsen for a writ of error to the court of civil appeals for the fourth district, and the same having been duly considered, it is ordered that said application be refused; that the applicant, Otto Olsen, pay all costs incurred on this application.

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court on said application for a writ of error.

Witness my hand and the seal of said court, this the 1st day of July, A. D. 1902.

F. T. CONNERLY, *Clerk*,
By E. P. GREGG, *Deputy*.

Endorsed: Application No. 3462. Otto Olsen *vs.* A. D. Smith *et al.* Copy of judgment in supreme court. Application for writ of error. Refused. Filed in the court of civil appeals at San Antonio, Texas, July 2, 1902. H. E. Hildebrand, clerk.

Bill of Costs in Supreme Court.

Clerk's office, supreme court.

OTTO OLSEN
vs.
A. D. SMITH ET AL.
No. 3462. Certified Copy Bill of Costs, Supreme Court.

Filing application	$ .50
Docketing petition	.50
Entering appearance of counsel	.50
Filing two briefs	.60
Filing three papers	.90
Entering orders	.50
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Total	$7.00

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

30 Witness my hand and the seal of said court, at Austin, this the 1st day of July, 1902.

F. T. CONNERLY, *Clerk.*

Endorsed: Application. No. 3462. Certified copy bill of costs in supreme court, Austin. Otto Olsen *vs.* A. D. Smith *et al.* $7.00. Filed in the court of civil appeals at San Antonio, Texas, July 2, 1902. H. E. Hildebrand, clerk.

Petition for Writ of Error.

In the Court of Civil Appeals, Fourth Supreme Judicial District of Texas.

OTTO OLSEN, Plaintiff in Error, *vs.* A. D. SMITH ET AL., Defendants in Error.	No. 2491. Petition for Writ of Error.

In the above entitled cause, Otto Olsen, plaintiff in error, *vs.* A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll and F. Johnson, defendants in error, the plaintiff in error, Otto Olsen, feeling himself aggrieved by the judgment of the district court of Galveston county, Texas, entered on the 11th day of November, 1901, and by the judgment of the court of civil appeals of the fourth supreme judicial district of the State of Texas, reforming and affirming said judgment of said district court on the 23rd day of April, 1902, and by the refusal of the supreme court of the State of Texas by its judgment dated June 25th, 1902, to grant to plaintiff in error a writ of error in said cause thereby making the judgment of the said court of civil appeals final, comes by Gresham & Gresham, his attorneys, and petitions said court for an order allowing said plaintiff in error (defendant in the trial court) to prosecute a writ of error to the Supreme Court of the United States of America under and in accordance with the laws of the United States in that behalf made and provided for the reasons specified in the assignment of errors filed herewith, and to the end that the manifest errors apparent in said judgment may be corrected; also that an order be made fixing the amount of bond which said plaintiff in error shall give to pay costs that may be adjudged against him by the Supreme Court of the United States.

31 Plaintiff in error respectfully states that he has this day filed herewith his assignment of errors committed by the

court below in said cause and intended to be urged by him in the prosecution of this his writ of error. And he will ever pray, etc.

GRESHAM & GRESHAM,
Att'ys for Plaintiff in Error.

Ap'l 24th, 1903.—The above petition for writ of error is allowed and the amount of the cost bond fixed at three hundred dollars.

JOHN H. JAMES,
Chief Justice of the Court of Civil Appeals, Fourth Supreme District of Texas.

Endorsed: No. 2491. Otto Olsen plaintiff in error, *vs.* A. D. Smith *et al.*, defendants in error. Petition for writ of error. Filed in the court of civil appeals at San Antonio, Texas, Apr. 24, 1903. H. E. Hildebrand, clerk.

Bond for Writ of Error.

In the Court of Civil Appeals of Texas, Fourth Supreme Judicial District.

OTTO OLSEN, Plaintiff in Error, vs. A. D. SMITH ET AL., Defendants in Error.	No. 2491. Bond for Writ of Error to the Supreme Court of the United States.

Know all men by these presents that we, Otto Olsen, as principal and —— —— and —— —— as sureties, are held and firmly bound unto A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carrol and F. Johnson, in the full and just sum of three hundred dollars to be paid to the said A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carrol and F. Johnson, their heirs, executors and administrators — which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals using scrolls for seals at Galveston, Texas, this 23rd day of April, 1903.

32 Whereas lately at a session of the court of civil appeals for the fourth supreme judicial district of Texas in a suit pending in said court between Otto Olsen, plaintiff in error, and A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carrol and F. Johnson, defendants in error, a final judgment was rendered against said plaintiff in error, and the said Otto Olsen, plaintiff in error, having obtained from the Honorable J. H. James,

chief justice of said court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll and F. Johnson, is about to be issued citing and admonishing them to be and appear at and before the Supreme Court of the United States to be held at Washington, D. C. within thirty days from the date hereof.

Now the conditions of the above obligation is such that if the said Otto Olsen shall prosecute his writ of error to effect, and shall answer all damages and costs that may be awarded against him, if he fails to make his plea good, then the above obligation to be void; otherwise to remain in full force and cirtue.

In witness whereof we hereunto set our hands and seals, using scrolls for seals, this 23rd day of April, 1903.

OTTO OLSEN. [SEAL.]
R. P. WILLIAMSON. [SEAL.]
WM. WILEY. [SEAL.]

UNITED STATES OF AMERICA, }
Southern District of Texas. }

R. P. Williamson and Wm. Wiley, being duly sworn, depose and say and each for himself saith that he is worth three hundred dollars over and above all just debts and liabilities and exemptions.

R. P. WILLIAMSON.
WM. WILEY.

[SEAL.] Sworn to this 22nd day of April, 1903, before me.

R. J. F. S. DREYFUS,
Notary Public in and for Galveston County, Texas.

Approved the within bond and the sureties thereto, Ap'l 24, 1903.

JOHN H. JAMES,
Chief Justice Court of Civil Appeals, 4th Supreme Judicial Dist. of Texas.

Endorsed: Otto Olsen, plaintiff in error, *vs.* A. D. Smith *et al.*, defendants in error. Bond for writ of error. Filed in the court of civil appeals at San Antonio, Texas, Apr. 24, 1903. H. E. Hildebrand, clerk.

33 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeals for the fourth supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals for the fourth supreme judicial district of Texas, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Otto Olsen, plaintiff in error, and A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carrol and F. Johnson, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Otto Olsen, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23rd day of April, in the year of our Lord
34 one thousand nine hundred and three.

C. DART,
Clerk of the Circuit Court of the United States for the Southern District of Texas,
By G. PREDECKI, *Deputy.*

Allowed by
JOHN H. JAMES,
Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of the State of Texas.

Endorsed: Otto Olsen, plaintiff in error, *vs.* A. D. Smith *et al.* defendants in error. Writ of error. Filed in the court of civil appeals at San Antonio, Texas, Apr. 24, 1903. H. E. Hildebrand, clerk.

Citation.

UNITED STATES OF AMERICA, *ss:*

To A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carrol, and F. Johnson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, District of Columbia, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of civil appeals for the fourth supreme judicial district of the State of Texas, wherein Otto Olsen is plaintiff in error and you, A. D. Smith, L. Huth, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carrol and F. J. Johnson, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. H. James, chief justice of the court of civil appeals for the fourth supreme judicial district of Texas, this 24th day of April, in the year of our Lord one thousand nine hundred and three.

J. H. JAMES,
Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas.

Endorsed: Otto Olsen, plaintiff in error, *vs.* A. D. Smith *et al.*, defendants in error. Citation. Filed in the court of civil appeals at San Antonio, Texas, Apr. 24, 1903. H. E. Hildebrand, clerk.

35 *Waiver of Citation and Acceptance of Service of Writ of Error.*

In the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas.

OTTO OLSEN, Plaintiff in Error, *vs.* A. D. SMITH ET AL., Defendants in Error.	No. 2491. Writ of Error to the Supreme Court of the United States.

I, James B. Stubbs, attorney for the defendants in error in the above entitled cause, which is being prosecuted by the plaintiff in error on writ of error to the Supreme Court of the United States, do

hereby waive citation and accept service for the defendants in error, and agree that the cause may be certified to the United States Supreme Court for final action without further notice to the defendants in error or either of them.

JAMES B. STUBBS,
Attorney for A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carrol, and F. Johnson, Defendants in Error.

Endorsed: Otto Olsen, plaintiff in error, *vs.* A. D. Smith *et al.*, defendants in error. Waiver of citation and acceptance of service of writ of error. Filed in the court of civil appeals at San Antonio, Texas, Apr. 24, 1903. H. E. Hildebrand, clerk.

Assignment of Errors.

In the Court of Civil Appeals, Fourth Supreme Judicial District of Texas.

OTTO OLSEN, Plaintiff in Error, *vs.* A. D. SMITH ET AL., Defendants in Error.	No. 2491. Assignment of Errors to the Supreme Court of the United States.

In the above entitled and numbered cause, Otto Olsen, plaintiff in error *vs.* A. D. Smith, L. Huth, L. Best, George Wilson, H. Wachsen, H. G. Jones, William Hayman, Peter Stewart, J. B. Woolford, H. Jobst, R. T. Carroll and F. Johnson, defendants in error, the plaintiff in error comes by his attorneys and says that the honorable court of civil appeals for the fourth supreme judicial district of the State of Texas in reforming and affirming the
36 judgment of the district court of Galveston county, Texas, has committed errors prejudicial to him in its opinion, rulings and judgment in this:

1st. The court erred in holding that the statute of the State of Texas (Revised Statute- arts. 3800, 3801 and 3803), that gives to the pilot, whose services are offered to and refused by a vessel outside of the bar, a claim for half pilotage against the vessel and a claim for a forfeit of $50 00 against the person piloting such vessel into or out of the port of Galveston and then exempts certain vessels from the provisions of the act, is valid and not in conflict with the Constitution, laws and treaties of the United States.

2nd. The court erred in holding that the defendants in error have the right to combine and to prevent competition in pilotage at the port of Galveston and that the statutes of the State of Texas that authorize such a combination are not in conflict with the anti-trust law of the United States (26 Stat. 209—c. 647) nor in violation of

paragraph 3 section 8 article 1 of the Constitution of the United States.

3rd. The court erred in holding that the statute of the State of Texas prescribing the qualifications and regulating the appointment of branch pilots is valid and does not abridge the privileges and immunities of plaintiff in error as a citizen of the United States, nor deprive him of his liberty and property without due process of law, nor deny him the equal protection of the law as guaranteed him by the 1st. section of the 14th amendment of the Constitution of the United States.

4th. The court erred in rendering judgment against plaintiff in error upon the pleadings in said cause in that said judgment is contrary to the law and the facts as stated in the pleadings therein.

Wherefore the said plaintiff in error prays that the judgment of said court be reversed and such directions be given that full force and efficacy may inure to plaintiff in error by reason of the defenses set up in his pleadings filed in said cause.

GRESHAM & GRESHAM,
Att'ys for Plaintiff in Error.

Endorsed: No. 2491. Otto Olsen, plaintiff in error, vs. A. D. Smith *et al.*, defendants in error. Assignment of errors. Filed in the court of civil appeals at San Antonio, Texas, Apr. 24, 1903. H. E. Hildebrand, clerk.

37 *Bill of Costs Adjudged Against Smith et al.*

OTTO OLSEN, Pl'ff. in Error, vs. A. D. SMITH ET AL., Def'ts in Error. } No. 2491. From Galveston County.

Filing record	$ .50
Docketing cause	.50
Appearances	1.00
Filing briefs and other papers	2.00
Notices	2.00
Orders	1.00
Judgment	1.00
Recording opinion	5.50
Certificate with seal	.50
Taxing cost	.50
Certified copy bill of costs	1.00
Mandate	1.50
Filing and docketing motion	
Costs in court of civil appeals at Galveston	5.75
Total	$22.75

$22.75 paid by defendants in error. July 23, 1903.

H. E. HILDEBRAND, *Clerk.*

Bill of Costs Adjudged Against Olsen.

OTTO OLSEN, Pl't'ff in Error,
vs.
A. D. SMITH ET AL., Def'ts in Error.
} No. 2491. From Galveston County.

Filing briefs and other papers	$ .40
Notices	1.00
Orders	1.00
Taxing costs	.50
Certified copy bill of costs	1.00
Filing and docketing motion	.35
Precept	1.00
Making certified copy of motion	1.40
Sheriff's fees (paid to sheriff of Galveston county	1.00
Execution for costs and return	1.50
Transcript to supreme court	1.50
Express charges to and from supreme court	.20
Costs in supreme court	7.50
Transcript to Supreme Court of United States	20.00
Total	$37.85

$20.00 for transcript paid by plaintiff in error. May 1st 1903.
H. E. HILDEBRAND, *Clerk.*

38 *Certificate of Clerk.*

STATE OF TEXAS:

Court of Civil Appeals, Fourth Supreme Judicial District.

I, H. E. Hildebrand, clerk of the court of civil appeals of the fourth supreme judicial district of the State of Texas, do hereby certify that the foregoing pages from 1 to 37 inclusive, are a true and correct copy of the original transcript filed in this court in the cause styled Otto Olsen, plaintiff in error, *vs.* A. D. Smith *et al.*, defendants in error, originally brought in the district court of Galveston county, Texas, together with all proceedings had in this court in the said cause.

In testimony whereof I have hereunto signed my name and annexed the official seal of this court, this April 27th, A. D., 1903.

[Seal Court of Civil Appeals of the State of Texas.]

H. E. HILDEBRAND,
Clerk Court of Civil Appeals of the Fourth Supreme Judicial District of Texas.

Endorsed on cover: File No. 18,940. Texas court of civil appeals, 4th sup. judicial district. Term No. 289. Otto Olsen, plaintiff in error, *vs.* A. D. Smith, L. Huth, L. Best, *et al.* Filed May 19", 1903.